

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305, titled Medical Dispute Resolution-General, and 133.307, titled Medical Dispute Resolution of a Medical Fee Dispute, a review was conducted by the Medical Review Division regarding a medical fee dispute between the requestor and the respondent named above.

I. DISPUTE

1.
 - a. Whether there should be additional reimbursement for date of service 03/16/01?
 - b. The request was received on 03/05/02.

II. EXHIBITS

1. Requestor, Exhibit 1:
 - a. TWCC-60a/b and Letter Requesting Dispute Resolution dated 04/12/02
 - b. UB-92s
 - c. EOBs
 - d. Reimbursement data
 - e. Medical Records
 - f. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
2. Respondent, Exhibit 2:
 - a. TWCC-60a/b and Response to a Request for Dispute Resolution dated 05/07/02
 - b. Reimbursement data
 - c. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
3. Per Rule 133.307 (g)(3), the Division forwarded a copy of the requestor's 14-day response to the insurance carrier on 04/26/02. Per Rule 133.307 (g)(4), the carrier representative signed for the copy on 04/26/02. The response from the insurance carrier was received in the Division on 05/08/02. Based on 133.307 (i) the insurance carrier's response is timely
4. Notice of Medical Dispute is reflected as Exhibit #3 of the Commission's case file

III. PARTIES' POSITIONS

1. Requestor: letter dated 04/12/02
"The date of service involved in this dispute was from March 16, 2001 for treatment regarding the above-referenced claimant's work-related injury. The Carrier denied payment with payment exception code 'M' for all items provided in the UB-92, which were Fee Codes with a 'MAR' and treatment codes without a 'MAR'."

2. Respondent: letter dated 05/07/02
“The (Requestor) has not shown that the fees paid to date fall below the statutory standard. It is the Carrier’s position that a party seeking recovery of medical fees from a workers’ compensation carrier under the Texas Workers’ Compensation Act has the burden of proof to establish by a preponderance of the credible evidence that the fees sought are allowable under the Act.”

IV. FINDINGS

1. Based on Commission Rule 133.307(d) (1&2), the only date of service eligible for review is 03/16/01.
2. The provider billed a total of \$5,853.78 on the date of service in dispute.
3. The carrier reimbursed a total of \$397.80 and their EOB has the denial “M – FAIR AND REASONABLE REIMBURSEMENT FOR THIS ENTIRE BILL IS MADE ON THE ‘OR SERVICE’ LINE ITEM.”
4. The amount in dispute per the TWCC-60 is \$5,400.98. The difference between the billed amount and the reimbursement received is \$5,455.98.

V. RATIONALE

The medical documentation indicates the services were performed at an ambulatory surgery center. Commission Rule 134.401 (a)(4) states ASCs, “shall be reimbursed at a fair and reasonable rate...”

Section 413.011 (d) of the Texas Labor Code states, “Guidelines for medical services must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fees charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual’s behalf. The Commission shall consider the increased security of payment afforded by this subtitle in establishing the fee guidelines.”

The provider has submitted reimbursement data to document what they consider inconsistent application by the carrier of the carrier’s own methodology. The provider has submitted 7 EOBs from this carrier. These indicate that the carrier paid 4.2% (low) to 85% (high) of the billed charges. The billed amounts shown on these EOBs range from a \$771.11 (low) to \$14,032.86 (high) and would seem to indicate dissimilar services. These EOBs do not indicate the procedure performed. In addition, the provider has submitted a reimbursement log of other EOBs. This list shows the date of service, the amount billed, amount reimbursed, percentage of the billed amount reimbursed, and the payer of the bill. The list shows a wide range in the amount billed and in the amount of reimbursement received as a percentage. The list contains no references to the treatments/services performed.

The Carrier has submitted reimbursement data to comply with Commission Rule 133.304 (i)(1-4). The carrier's methodology incorporates information from:

1. U.S. Department of Health and Human Services. Health Care Financing Administration. "Ambulatory Surgical Center 1994 Medicare Payment Rate Survey" <http://www.hcfa.gov/medicare/ascread.htm>, August 17, 1998.
2. U.S. Department of Health and Human Services, Health Care Financing Administration, "Medicare Program: Update of Ambulatory Surgical Center Payment Rates Effective for Services on or after October 1, 1997" (Notices) Federal Register, 63FR19FE98 8462-8465.

The carrier indicates that Medicare classifies surgical procedures into 8 groups. All CPT Codes within the same grouping are paid at the same rate (group rate). That reimbursement allowed by Medicare is then multiplied by 20%. This is the co-pay amount under Medicare that the patient pays and which is not allowed by Texas Workers' Compensation Act. The group rate and the co-pay amount are added together to determine the total payment.

The carrier notes that regional and geographic differences are taken into account by Medicare. However, the carrier believes that by taking the group rate and adding in the co-pay amount, that its reimbursement is higher than Medicare's rate of reimbursement.

Carrier exhibit 2 is a copy of the ASC groups as indicated by the Federal Register, 12/14/93. The carrier has submitted additional information to further support its methodology. Carrier exhibit 3 is a list of CPT codes and the group under which they fall.

Due to the fact that there is no current fee guideline for ASCs, the Medical Review Division has to determine what would be fair and reasonable reimbursement. Both parties to the dispute have submitted documentation in support of their position. Regardless of the carrier's application of its methodology, the burden is on the provider to show that the amount of reimbursement requested is fair and reasonable. An analysis of recent decisions of the State Office of Administrative Hearings indicate minimal weight should be given to EOBs for documenting fair and reasonable reimbursement. The carrier's documentation is more persuasive and meets the requirement of Sec. 413.011(d) of the Texas Labor Code, "to achieve effective medical cost control." Therefore, no additional reimbursement is recommended.

The above Findings and Decision are hereby issued this 18th day of June, 2002.

Larry Beckham
Medical Dispute Resolution Officer
Medical Review Division

This document is signed under the authority delegated to me by Richard Reynolds, Executive Director, pursuant to the Texas Workers' Compensation Act, Texas Labor Code Sections 402.041 - 402.042 and re-delegated by Virginia May, Deputy Executive Director.